

July 26, 1985

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

Harry Ray v. City of San Diego

San Diego Municipal Court No. 346110

Plaintiff, a 62 year old retired pilot, brought the above action for false arrest arising from an arrest for driving under the influence of alcohol.

On December 14, 1982 at 1:00 a.m., a San Diego Police Officer observed the plaintiff's vehicle for three-fourths of a block on Midway Drive proceeding at five to ten miles per hour, weaving within its lane and crossing the lane divider once. The officer contacted plaintiff and noted the odor of alcohol on his breath, bloodshot eyes and slurring of some words. The officer had plaintiff perform a field sobriety test which indicated some, but not many, problems with coordination. The officer then arrested

plaintiff for driving a vehicle under the influence of alcohol.

A subsequent chemical test indicated plaintiff's blood alcohol level was .03, .10 being considered as legally under the influence. (The results of the chemical test were unknown until after plaintiff's release from custody.) Plaintiff was in jail for eight hours during which time he was strip-searched and had to remain standing because of overcrowding. Plaintiff was not prosecuted because of the low blood alcohol level.

Plaintiff contended he was unlawfully arrested and sought \$10,000 in damages. The City contended that probable cause existed for the arrest and therefore the arrest was lawful.

The case was tried beginning July 16, 1985 in San Diego Municipal Court before a jury and the Honorable Manuel Kugler; the jury to determine factual issues and damages and the judge to determine probable cause based upon the facts found by the jury.

On July 22, 1985 the jury found 14 of 15 facts relied upon by the officer in making the arrest to be true and that plaintiff's damages were \$5,000 if liability was found. The judge then ruled that those facts established probable cause as a matter of law: therefore the arrest was lawful and there was no liability. Judgment was then entered on behalf of the City of San Diego.

Deputy City Attorney Sim von Kalinowski tried the case on

behalf of the City of San Diego.

Respectfully submitted,

JOHN W. WITT

City Attorney

SvK:dv:Lit.(x043.1)

RC-85-24